

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

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NO. 33

This issue contains:

U.S. Customs Service

T.D. 99-60 Through 99-63

General Notices

Proposed Rulemaking

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 99-60)

CUSTOMS ACCREDITATION OF COASTAL GULF & INTERNATIONAL INC. AS AN ACCREDITED LABORATORY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Accreditation of Coastal Gulf & International, Inc. as a Commercial Accredited Laboratory.

SUMMARY: Coastal Gulf & International, Inc., of Luling, Louisiana has applied to U.S. Customs for accreditation to perform petroleum analysis methods under Part 151.13 of the Customs Regulations (19 CFR 151.13) to their Luling, Louisiana facility. Customs has determined that Coastal Gulf & International, Inc. meets all of the requirements for accreditation as a Commercial Laboratory to perform (1) API Gravity, (2) Distillation, (3) Viscosity, (4) Sediment by Extraction and (5) Percent by Weight of Sulfur. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Coastal Gulf & International, Inc., is granted accreditation to perform the analysis methods listed above.

LOCATION: Coastal Gulf & International, Inc. accredited site is located at: 13615 River Road, Luling, Louisiana, 70070.

EFFECTIVE DATE: July 27, 1999

FOR FURTHER INFORMATION CONTACT: Michael J. Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5-B, Washington, D.C. 20229 at (202) 927-1060.

Dated: July 27, 1999.

IRA S. REESE,
*Acting Director,
Laboratories and Scientific Services.*

[Published in the Federal Register, August 4, 1999 (64 FR 42426)]

19 CFR Part 24

(T.D. 99-61)

RIN 1515-AC47

EXEMPTION OF ORIGINATING MEXICAN GOODS FROM
CERTAIN CUSTOMS USER FEES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect that goods imported from Mexico that qualify as originating goods under the North American Free Trade Agreement (NAFTA) Implementation Act (the Act) and qualify as goods of Mexico for marking under the NAFTA Marking Rules will no longer be subject to the merchandise processing fees assessed under 19 U.S.C. 58c(a)(9) and (10). This amendment results from a provision of Title II of the Act, which eliminates application of the fees for originating Mexican goods after June 29, 1999.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Duchan, Office of Field Operations (202-927-0639).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (codified at 19 U.S.C. 58c and referred to in this document as the COBRA provision), provides for the collection of various fees for providing Customs services in connection with the arrival of vessels, vehicles, railroad cars, aircraft, passengers and dutiable mail, in connection with the entry or release of merchandise, and in connection with Customs broker permits. The fees pertaining to the entry or release of merchandise are set forth in subsections (a)(9) and (10) of the COBRA provision (19 U.S.C. 58c(a)(9) and (10)) and include an ad valorem fee for each formal entry or release (subject to specific maximum and minimum limits), a surcharge for each manual entry or release, and specific fees for three types of informal entry or release.

Title II of the North American Free Trade Agreement (NAFTA) Implementation Act (the Act), Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions relating to the administration of certain Customs laws. In section 204 of Title II, paragraph (10) of section 13031(b) of the COBRA (19 U.S.C. 58c(b)(10)) was amended to provide, in pertinent part, that for goods qualifying under the rules of origin set out in section 202 of the Act (19 U.S.C. 3332 and General Note 12, Harmonized Tariff Schedule of the United States (HTSUS) (pertaining to rules of origin)), the fees under subsection (a)(9) or (10) may not be increased after December 31, 1993, and may not be charged after June 29,

1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to Annex 311 of the Act, for such time as Mexico is a NAFTA country (see 19 U.S.C. 58c(b)(10)(B)(ii)).

Regulations implementing the COBRA provision regarding merchandise processing fees are contained in § 24.23 of the Customs Regulations (19 CFR 24.23). Section 24.23(c)(3) pertains to an exemption from the merchandise processing fees (provided for under paragraphs (b)(1) and (b)(2)(i) of § 24.23) for goods originating in Canada within the meaning of either General Note 9 or General Note 12 of the HTSUS, where such goods qualify to be marked as goods of Canada pursuant to Annex 311 of the Act.

Customs, in this document, amends § 24.23(c)(3) to: (1) add to the merchandise subject to the exemption goods originating in Mexico within the meaning of General Note 12, HTSUS, where such goods qualify to be marked as goods of Mexico pursuant to Annex 311 of the Act; (2) add language specifying that the exemption applies to such Mexican goods entered or released after June 29, 1999; and (3) remove the reference to General Note 9, HTSUS. Regarding the effective date, this exemption will apply to qualifying Mexican goods "entered or released" after June 29, 1999, within the meaning of that term as defined in § 24.23(a)(2) and 19 U.S.C. 58c(b)(8)(E). Regarding removal of the reference to General Note 9, HTSUS, this General Note pertained to the Canadian Free Trade Agreement which is suspended. Consequently, reference to it is no longer relevant for purposes of the section.

INAPPLICABILITY OF PUBLIC NOTICE AND COMMENT AND DELAYED EFFECTIVE DATE REQUIREMENTS

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary. The regulatory change conforms the Customs Regulations to the terms of a statutory provision that is already in effect. In addition, the regulatory change benefits the public by providing specific information regarding the right to an exemption from the payment of certain import fees. Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice and comment is also inapplicable to this final regulation because it is within the foreign affairs function of the United States. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 24

Accounting, Claims, Customs duties and inspection, Taxes, User fees, Wages.

AMENDMENT TO THE REGULATIONS

For the reasons stated in the preamble, part 24 of the Customs Regulations (19 CFR Part 24) is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND
ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part, and a new authority citation for § 24.23 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

2. Section 24.23(c)(3) is revised to read as follows:

Section 24.23 Fees for processing merchandise.

* * * * *

(c) *Exemptions and limitations.* * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS (see also 19 U.S.C. 3332), where such goods qualify to be marked, respectively, as goods of Canada or Mexico pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. For qualifying goods originating in Mexico, the exemption applies to goods entered or released (as defined in this section) after June 29, 1999. Where originating goods as described above are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

* * * * *

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: June 14, 1999.

JOHN P. SIMPSON,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, August 3, 1999 (64 FR 42031)]

(T.D. 99-62)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JULY 1999

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): July 5, 1999.

Austria schilling:

July 1, 1999	.....	\$0.074388
July 2, 1999	.....	.074446
July 3, 1999	.....	.074446
July 4, 1999	.....	.074446
July 5, 1999	.....	.074446
July 6, 1999	.....	.074482
July 7, 1999	.....	.074301
July 8, 1999	.....	.074112
July 9, 1999	.....	.074025
July 10, 1999	.....	.074025
July 11, 1999	.....	.074025
July 12, 1999	.....	.073683
July 13, 1999	.....	.073952
July 14, 1999	.....	.074235
July 15, 1999	.....	.074272
July 16, 1999	.....	.074148
July 17, 1999	.....	.074148
July 18, 1999	.....	.074148
July 19, 1999	.....	.074148
July 20, 1999	.....	.075725
July 21, 1999	.....	.076495
July 22, 1999	.....	.076372
July 23, 1999	.....	.076285
July 24, 1999	.....	.076285
July 25, 1999	.....	.076285
July 26, 1999	.....	.077404
July 27, 1999	.....	.077229
July 28, 1999	.....	.077353
July 29, 1999	.....	.077898
July 30, 1999	.....	.077724
July 31, 1999	.....	.077724

Belgium franc:

July 1, 1999	.....	\$0.025374
July 2, 1999	.....	.025394
July 3, 1999	.....	.025394
July 4, 1999	.....	.025394
July 5, 1999	.....	.025394
July 6, 1999	.....	.025407
July 7, 1999	.....	.025345
July 8, 1999	.....	.025280
July 9, 1999	.....	.025250

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for July 1999 (continued):

Belgium franc (continued):

July 10, 1999	\$.025250
July 11, 1999	.025250
July 12, 1999	.025134
July 13, 1999	.025226
July 14, 1999	.025322
July 15, 1999	.025335
July 16, 1999	.025293
July 17, 1999	.025293
July 18, 1999	.025293
July 19, 1999	.025293
July 20, 1999	.025831
July 21, 1999	.026093
July 22, 1999	.026051
July 23, 1999	.026021
July 24, 1999	.026021
July 25, 1999	.026021
July 26, 1999	.026403
July 27, 1999	.026344
July 28, 1999	.026386
July 29, 1999	.026572
July 30, 1999	.026512
July 31, 1999	.026512

Finland markka:

July 1, 1999	\$0.172157
July 2, 1999	.172292
July 3, 1999	.172292
July 4, 1999	.172292
July 5, 1999	.172292
July 6, 1999	.172376
July 7, 1999	.171955
July 8, 1999	.171518
July 9, 1999	.171316
July 10, 1999	.171316
July 11, 1999	.171316
July 12, 1999	.170526
July 13, 1999	.171148
July 14, 1999	.171804
July 15, 1999	.171888
July 16, 1999	.171602
July 17, 1999	.171602
July 18, 1999	.171602
July 19, 1999	.171602
July 20, 1999	.175252
July 21, 1999	.177035
July 22, 1999	.176749
July 23, 1999	.176547
July 24, 1999	.176547
July 25, 1999	.176547
July 26, 1999	.179137
July 27, 1999	.178733
July 28, 1999	.179019
July 29, 1999	.180281
July 30, 1999	.179877
July 31, 1999	.179877

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
July 1999 (continued):

France franc:

July 1, 1999	\$.156047
July 2, 1999	.156169
July 3, 1999	.156169
July 4, 1999	.156169
July 5, 1999	.156169
July 6, 1999	.156245
July 7, 1999	.155864
July 8, 1999	.155468
July 9, 1999	.155285
July 10, 1999	.155285
July 11, 1999	.155285
July 12, 1999	.154568
July 13, 1999	.155132
July 14, 1999	.155727
July 15, 1999	.155803
July 16, 1999	.155544
July 17, 1999	.155544
July 18, 1999	.155544
July 19, 1999	.155544
July 20, 1999	.158852
July 21, 1999	.160468
July 22, 1999	.160209
July 23, 1999	.160026
July 24, 1999	.160026
July 25, 1999	.160026
July 26, 1999	.162373
July 27, 1999	.162008
July 28, 1999	.162267
July 29, 1999	.163410
July 30, 1999	.163044
July 31, 1999	.163044

Germany deutsche mark:

July 1, 1999	\$.523358
July 2, 1999	.523767
July 3, 1999	.523767
July 4, 1999	.523767
July 5, 1999	.523767
July 6, 1999	.524023
July 7, 1999	.522745
July 8, 1999	.521415
July 9, 1999	.520802
July 10, 1999	.520802
July 11, 1999	.520802
July 12, 1999	.518399
July 13, 1999	.520291
July 14, 1999	.522285
July 15, 1999	.522540
July 16, 1999	.521671
July 17, 1999	.521671
July 18, 1999	.521671
July 19, 1999	.521671
July 20, 1999	.532766
July 21, 1999	.538186
July 22, 1999	.537317
July 23, 1999	.536703

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for July 1999 (continued):

Germany deutsche mark (continued):

July 24, 1999	\$.536703
July 25, 1999	.536703
July 26, 1999	.544577
July 27, 1999	.543350
July 28, 1999	.544219
July 29, 1999	.548054
July 30, 1999	.546827
July 31, 1999	.546827

Greece drachma:

July 1, 1999	\$.003147
July 2, 1999	.003153
July 3, 1999	.003153
July 4, 1999	.003153
July 5, 1999	.003153
July 6, 1999	.003147
July 7, 1999	.003145
July 8, 1999	.003133
July 9, 1999	.003134
July 10, 1999	.003134
July 11, 1999	.003134
July 12, 1999	.003120
July 13, 1999	.003132
July 14, 1999	.003147
July 15, 1999	.003152
July 16, 1999	.003147
July 17, 1999	.003147
July 18, 1999	.003147
July 19, 1999	.003141
July 20, 1999	.003208
July 21, 1999	.003238
July 22, 1999	.003230
July 23, 1999	.003231
July 24, 1999	.003231
July 25, 1999	.003231
July 26, 1999	.003278
July 27, 1999	.003272
July 28, 1999	.003273
July 29, 1999	.003295
July 30, 1999	.003285
July 31, 1999	.003285

Ireland pound:

July 1, 1999	\$1.299704
July 2, 1999	1.300720
July 3, 1999	1.300720
July 4, 1999	1.300720
July 5, 1999	1.300720
July 6, 1999	1.301355
July 7, 1999	1.298180
July 8, 1999	1.294879
July 9, 1999	1.293355
July 10, 1999	1.293355
July 11, 1999	1.293355
July 12, 1999	1.287387
July 13, 1999	1.292085

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
July 1999 (continued):

Ireland pound (continued):

July 14, 1999	\$1.297037
July 15, 1999	1.297672
July 16, 1999	1.295514
July 17, 1999	1.295514
July 18, 1999	1.295514
July 19, 1999	1.295514
July 20, 1999	1.323067
July 21, 1999	1.336526
July 22, 1999	1.334368
July 23, 1999	1.332844
July 24, 1999	1.332844
July 25, 1999	1.332844
July 26, 1999	1.352398
July 27, 1999	1.349351
July 28, 1999	1.351509
July 29, 1999	1.361032
July 30, 1999	1.357985
July 31, 1999	1.357985

Italy lira:

July 1, 1999	\$0.000529
July 2, 1999	.000529
July 3, 1999	.000529
July 4, 1999	.000529
July 5, 1999	.000529
July 6, 1999	.000529
July 7, 1999	.000528
July 8, 1999	.000527
July 9, 1999	.000526
July 10, 1999	.000526
July 11, 1999	.000526
July 12, 1999	.000524
July 13, 1999	.000526
July 14, 1999	.000528
July 15, 1999	.000528
July 16, 1999	.000527
July 17, 1999	.000527
July 18, 1999	.000527
July 19, 1999	.000527
July 20, 1999	.000538
July 21, 1999	.000544
July 22, 1999	.000543
July 23, 1999	.000542
July 24, 1999	.000542
July 25, 1999	.000542
July 26, 1999	.000550
July 27, 1999	.000549
July 28, 1999	.000550
July 29, 1999	.000554
July 30, 1999	.000552
July 31, 1999	.000552

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for July 1999 (continued):

Luxembourg franc:

July 1, 1999	\$0.025374
July 2, 1999	.025394
July 3, 1999	.025394
July 4, 1999	.025394
July 5, 1999	.025394
July 6, 1999	.025407
July 7, 1999	.025345
July 8, 1999	.025280
July 9, 1999	.025250
July 10, 1999	.025250
July 11, 1999	.025250
July 12, 1999	.025134
July 13, 1999	.025226
July 14, 1999	.025322
July 15, 1999	.025335
July 16, 1999	.025293
July 17, 1999	.025293
July 18, 1999	.025293
July 19, 1999	.025293
July 20, 1999	.025831
July 21, 1999	.026093
July 22, 1999	.026051
July 23, 1999	.026021
July 24, 1999	.026021
July 25, 1999	.026021
July 26, 1999	.026403
July 27, 1999	.026344
July 28, 1999	.026386
July 29, 1999	.026572
July 30, 1999	.026512
July 31, 1999	.026512

Netherlands guilder:

July 1, 1999	\$0.464489
July 2, 1999	.464852
July 3, 1999	.464852
July 4, 1999	.464852
July 5, 1999	.464852
July 6, 1999	.465079
July 7, 1999	.463945
July 8, 1999	.462765
July 9, 1999	.462221
July 10, 1999	.462221
July 11, 1999	.462221
July 12, 1999	.460088
July 13, 1999	.461767
July 14, 1999	.463536
July 15, 1999	.463763
July 16, 1999	.462992
July 17, 1999	.462992
July 18, 1999	.462992
July 19, 1999	.462992
July 20, 1999	.472839
July 21, 1999	.477649
July 22, 1999	.476878
July 23, 1999	.476333

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for July 1999 (continued):

Netherlands guilder (continued):

July 24, 1999	.....	\$0.476333
July 25, 1999	.....	.476333
July 26, 1999	.....	.483321
July 27, 1999	.....	.482232
July 28, 1999	.....	.483004
July 29, 1999	.....	.486407
July 30, 1999	.....	.485318
July 31, 1999	.....	.485318

Portugal escudo:

July 1, 1999	.....	\$0.005106
July 2, 1999	.....	.005110
July 3, 1999	.....	.005110
July 4, 1999	.....	.005110
July 5, 1999	.....	.005110
July 6, 1999	.....	.005112
July 7, 1999	.....	.005100
July 8, 1999	.....	.005087
July 9, 1999	.....	.005081
July 10, 1999	.....	.005081
July 11, 1999	.....	.005081
July 12, 1999	.....	.005057
July 13, 1999	.....	.005076
July 14, 1999	.....	.005095
July 15, 1999	.....	.005098
July 16, 1999	.....	.005089
July 17, 1999	.....	.005089
July 18, 1999	.....	.005089
July 19, 1999	.....	.005089
July 20, 1999	.....	.005197
July 21, 1999	.....	.005250
July 22, 1999	.....	.005242
July 23, 1999	.....	.005236
July 24, 1999	.....	.005236
July 25, 1999	.....	.005236
July 26, 1999	.....	.005313
July 27, 1999	.....	.005301
July 28, 1999	.....	.005309
July 29, 1999	.....	.005347
July 30, 1999	.....	.005335
July 31, 1999	.....	.005335

South Korea won:

July 1, 1999	.....	\$0.000858
July 2, 1999	.....	.000859
July 3, 1999	.....	.000859
July 4, 1999	.....	.000859
July 5, 1999	.....	.000859
July 6, 1999	.....	.000856
July 7, 1999	.....	.000853
July 8, 1999	.....	.000847
July 9, 1999	.....	.000842
July 10, 1999	.....	.000842
July 11, 1999	.....	.000842
July 12, 1999	.....	.000845
July 13, 1999	.....	.000850

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for July 1999 (continued):

South Korea won (continued):

July 14, 1999	.....	\$0.000845
July 15, 1999	.....	.000845
July 16, 1999	.....	.000845
July 17, 1999	.....	.000845
July 18, 1999	.....	.000845
July 19, 1999	.....	.000842
July 20, 1999	.....	.000838
July 21, 1999	.....	.000833
July 22, 1999	.....	.000827
July 23, 1999	.....	.000827
July 24, 1999	.....	.000827
July 25, 1999	.....	.000827
July 26, 1999	.....	.000827
July 27, 1999	.....	.000831
July 28, 1999	.....	.000835
July 29, 1999	.....	.000830
July 30, 1999	.....	.000831
July 31, 1999	.....	.000831

Spain peseta:

July 1, 1999	.....	\$0.006152
July 2, 1999	.....	.006157
July 3, 1999	.....	.006157
July 4, 1999	.....	.006157
July 5, 1999	.....	.006157
July 6, 1999	.....	.006160
July 7, 1999	.....	.006145
July 8, 1999	.....	.006129
July 9, 1999	.....	.006122
July 10, 1999	.....	.006122
July 11, 1999	.....	.006122
July 12, 1999	.....	.006094
July 13, 1999	.....	.006116
July 14, 1999	.....	.006139
July 15, 1999	.....	.006142
July 16, 1999	.....	.006132
July 17, 1999	.....	.006132
July 18, 1999	.....	.006132
July 19, 1999	.....	.006132
July 20, 1999	.....	.006263
July 21, 1999	.....	.006326
July 22, 1999	.....	.006316
July 23, 1999	.....	.006309
July 24, 1999	.....	.006309
July 25, 1999	.....	.006309
July 26, 1999	.....	.006401
July 27, 1999	.....	.006387
July 28, 1999	.....	.006397
July 29, 1999	.....	.006442
July 30, 1999	.....	.006428
July 31, 1999	.....	.006428

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
July 1999 (continued):

Taiwan N.T. dollar:

July 1, 1999	\$.030941
July 2, 1999	.030979
July 3, 1999	.030979
July 4, 1999	.030979
July 5, 1999	.030979
July 6, 1999	.030969
July 7, 1999	.030960
July 8, 1999	.030917
July 9, 1999	.030907
July 10, 1999	.030907
July 11, 1999	.030907
July 12, 1999	.030998
July 13, 1999	.030969
July 14, 1999	.030969
July 15, 1999	.030921
July 16, 1999	.030874
July 17, 1999	.030874
July 18, 1999	.030874
July 19, 1999	.030902
July 20, 1999	.030998
July 21, 1999	.030855
July 22, 1999	.030769
July 23, 1999	.030864
July 24, 1999	.030864
July 25, 1999	.030864
July 26, 1999	.030931
July 27, 1999	.030864
July 28, 1999	.030883
July 29, 1999	.030912
July 30, 1999	.031017
July 31, 1999	.031017

Dated: August 11, 1999.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 99-63)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JULY 1999

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 99-54 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): July 5, 1999.

Japan yen:

July 30, 1999	\$0.008718
July 31, 1999008718

Switzerland franc:

July 29, 1999	\$0.671141
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Dated: August 11, 1999.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 4, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE "BIO-SET INFUSION DEVICE"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of the "Bio-Set Infusion Device."

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of the "Bio-Set Infusion Device," under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 17, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue,

N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of the "Bio-Set Infusion Device." Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) D81573, dated September 29, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States

(HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY D81573 Customs ruled that the "Bio-Set Infusion Device" was classified in subheading 7326.90.85, HTSUS, the residual provision for articles of steel. The "Bio-Set Infusion Device" consists of a hollow metal needle in a plastic casing. One end of the device is designed such that it can be affixed to a standard size vial so that the metal needle protrudes through the rubber stopper of the vial while the other end attaches to an infusion bag. In this way the contents of the vial can be transferred to the infusion bag and administered to the patient. NY D81573 is set forth as Attachment A to this notice.

After review and consideration of NY D81573, we are of the opinion that the "Bio-Set Infusion Device" does not fall within heading 7326, HTSUS. Classification of the "Bio-Set Infusion Device" in that heading was premised upon exclusion of the merchandise from heading 9018, HTSUS. However, the "Bio-Set Infusion Device" is an instrument used in medical science for the treatment of illnesses and is therefore described by heading 9018, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY D81573, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HRL) 962361 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 28, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, September 29, 1998.

CLA-2-73:RR:NC:115 D81573
Category: Classification
Tariff No. 7326.90.8585

MR. JACK D. MLAWSKI
GALVIN & MLAWSKI
440 Park Avenue South
New York, NY 10016-8067

Re: The tariff classification of a BIO-SET Infusion Cap from France.

DEAR MR. MLAWSKI:

In your letter dated August 21, 1998, you requested, on behalf of your client Merck & Co, a tariff classification ruling.

The subject merchandise, Bio-Set, is a medical device intended to substitute for the syringes in transferring drugs contained in a standard drug vial to infusion bags which are, in turn, connected to a catheter attached to a patient.

In your inquiry you feel that the classification should be under HTS 9018.39.00. The National Import Specialist for Medical, Surgical and Dental Instruments has reviewed your correspondence and is of the opinion that HTS 9018.39.00 does not apply. His reasons follow:

1. Per *Dortland's Illustrated Medical Dictionary*, 1994, catheters and cannulae are devices for insertion into body cavities and ducts to withdraw or introduce fluid. The metal portion of your device is inserted into a container of medicaments through its rubber cap to enable the medicament to flow out when the container is inverted (and squeezed if necessary).

2. Per the same source, syringes are used both to inject or withdraw liquids from any vessel or cavity. They are used to withdraw medicaments from a container. However, syringes are used to withdraw a measured amount of liquid, while your device will be used simply empty the container. Syringes temporarily hold the liquid in its container until it can be injected into a different locale, usually, although, as you, point out, not always, a patient's blood vessel. Your device has no container and cannot inject the liquid, but only let it drip out.

3. Looking to the channel of trade, those items are normally sold to hospitals and medical professionals for their use while yours is sold only to pharmaceutical firms for attachment to their containers filled with medicaments.

4. Your device has some vague similarity to the appliances of 9018.39. Bougies, drains, and sounds, cited in the USA statistical breakouts, are the type of devices which are sufficiently "like" those of 9018.39, not yours.

The plastic provisions of the Tariff were also considered and not applicable for the following reasons:

"Does not function as a cap as it is placed over the cap/stopper of the bottle.

Plastic acts as a protective covering for the metal cannulae, even as a handle for the cannula it does not impact the essential character."

Based on the above comments from other National Import Specialists it is the opinion of this office that the needle is the essential character.

The applicable subheading for the Bio-Set will be 7326.90.8585, Harmonized Tariff Schedules of the United States (HTS), which provides for Other articles of iron or steel other, other. The rate of duty will be 3.5% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R.)

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-466-5487.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 962361 MGM
Category: Classification
Tariff No. 9018.90.80

JACK D. MLAWSKI, ESQ.
GALVIN & MLAWSKI
440 Park Avenue South—9th Floor
New York, NY 10016-8067

Re: "Bio-Set" Infusion Device; NY D81573.

DEAR MR. MLAWSKI:

This is in response to your letter, dated November 4, 1998, on behalf of Merck & Co., Inc., in which you seek review of NY D81573 issued to you by the Customs National Commodity Specialist Division, New York. In NY D81573, dated September 29, 1998, the "Bio-Set" infusion device was classified in subheading 7326.90.85, Harmonized Tariff Schedule of the United States (HTSUS), as an article of steel.

Facts:

The "Bio-Set" infusion device is designed to aid in the administration of drugs to patients. It functions by acting as a conduit between the vial in which drugs are packaged and an infusion bag which is attached to a catheter which is in turn connected to the patient. The "Bio-Set" infusion device consists of a hollow metal needle in a plastic casing. One end of the device is designed such that it can be affixed to a standard size vial so that the metal needle protrudes through the rubber stopper of the vial while the other end attaches to an infusion bag. In this way the contents of the vial can be transferred to the infusion bag and administered to the patient.

Issue:

Is the "Bio-Set" infusion device an instrument or appliance used in medical science?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

NY D81573 held that the "Bio-Set" infusion device was classified as an article of steel. This classification is based on GRI 3 which applies to goods which are *prima facie* classifiable under two or more headings. However, where merchandise can be classified according to GRI 1, that is, according to the headings, section notes or chapter notes, GRI 3 is inapplicable.

Heading 9018, HTSUS, provides for "[i]nstruments and appliances used in medical * * * sciences." "This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc." EN 90.18. Here the merchandise is an instrument or appliance used in the administration of pharmaceutical substances, that is, to prevent or treat an ill-

ness. Thus, it is an instrument used in medical science and is classified in heading 9018, HTSUS, pursuant to GRI 1.

One might argue that the "Bio-Set" infusion device is too far removed from the patient to be considered an instrument used in medical science. That is, the "Bio-Set" infusion device might be considered as merely an accessory for use with an intravenous (I.V.) administration apparatus. However, accessories suitable for use solely or principally with a particular kind of apparatus are to be classified with the apparatus of that kind. Note 2 (b), Chapter 90, HTSUS. Therefore the "Bio-Set" infusion device, even if considered merely an accessory, is classified with apparatus for the administration of I.V. fluids. Such apparatus are classified as "other" instruments or appliances used in medical science in subheading 9018.90.80, HTSUS. See NY 869994, dated January 14, 1992; NY 804233, dated December 1, 1994; NY 811806, dated July 18, 1995; NY A83725, dated June 11, 1996.

Within heading 9018, you argue that the "Bio-Set" infusion device falls within subheading 9018.31.00, HTSUS, which provides for "[s]yringes, needles, catheters, cannulae, and the like; parts and accessories thereof." It is your position that although the instant merchandise is not a syringe or cannulae, it is sufficiently similar in form and function to qualify as a "like" good. Under the rule of *ejusdem generis*, the phrase "and the like" is limited to goods which "possess the essential characteristics or purposes that unite the articles enumerated *eo nomine*." *Totes, Inc. v. U.S.*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390 (Fed. Cir. 1994)). The characteristic which unites the exemplars of this subheading is their direct application to the body. The "Bio-Set" infusion device is further removed from the patient than syringes, needles, catheters or cannulae. Those devices are each used in administering fluids directly to the body while the "Bio-Set" infusion device transfers fluids only to an infusion bag. Thus, it does not share the characteristic which unites the exemplars of subheading 9018.31.00, HTSUS, and is not a "like" good. However, the merchandise remains an instrument used in medical science of heading 9018, HTSUS. As none of the more specific subheadings of heading 9018, describe the "Bio-Set" infusion device, it falls to the residual or "other" provision.

This is consistent with NY 882361, dated February 24, 1993, which classified a "Drug Infusion Balloon Catheter." In that ruling, a device which acted as a conduit between a medicinal preparation and a tube connected to a catheter was classified as an "other" instrument or appliance used in medical science.

Holding:

The "Bio-Set" infusion device is classified in subheading 9018.90.80, HTSUS, which provides for "[o]ther instruments and appliances and parts and accessories thereof; other; other."

NY D81573 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF LIGHTED PLASTIC CHRISTMAS LAWN ORNAMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of certain lighted plastic Christmas lawn ornaments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of lighted plastic Christmas lawn ornaments and any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in Vol. 33, No. 25 of the CUSTOMS BULLETIN dated June 23, 1999.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, General Classification Branch, (202) 927-3315.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant

to Customs obligations, a notice of proposed revocation of Headquarters Ruling Letter (HQ) 954252 was published in Vol. 33, No. 25 of the CUSTOMS BULLETIN dated June 23, 1999. No comments were received.

As stated in that notice this revocation action will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In HQ 954252, issued November 15, 1993, Customs ruled that certain plastic lighted lawn ornament sets were classified in subheading 3926.40.00, HTSUS, which provides for "[o]ther articles of plastics and articles of other materials for headings 3901 to 3914: [s]tatuettes and other ornamental articles" with a 1993 general rate of duty of 5.3 percent *ad valorem*. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise based on the court opinions in *Midwest of Cannon Falls, Inc. v. United States*, 122 F.3d 1423 (Fed. Cir. 1997) and has determined that the 1993 ruling is in error. We have determined that this particular style of lawn ornaments which are within the class of other decorative Christmas ornaments are properly classified in subheading 9505.10.25, HTSUS, as "[a]rticles for Christmas festivities and parts and accessories thereof: [c]hristmas ornaments: [o]ther: [o]ther."

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 954252 and any other ruling not specifically identified, to reflect the proper classification of these lawn ornaments. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Headquarters Ruling Letter (HQ) 961101 revoking HQ 954252, is set forth as an Attachment to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Dated: July 28, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 28, 1999.
CLA-2 RR:CR:GC 961101 JRS
Category: Classification
Tariff No. 9505.10.25

Ms. MARILYN-JOY CERNY
GLOBAL CUSTOMS & TRADE SPECIALISTS, INC.
Milltown Office Park—Suite B-202
Route 22
Brewster, NY 10509

Re: Lighted Plastic Christmas Lawn Ornaments; Revocation of HQ 954252; Festive Articles.

DEAR Ms. CERNY:

This is in reference to your letter of November 10, 1997, on behalf of Fingerhut Corporation, requesting reconsideration of Headquarters Ruling Letter (HQ) 954252, issued to Fingerhut Corporation on November 15, 1993, in which Customs classified certain lighted plastic lawn ornaments under subheading 3926.40.00 of the Harmonized Tariff Schedule of the United States (HTSUS), as statuettes and other ornamental articles of plastic. We have reviewed this ruling and determined that the classification provided is not correct. A notice of proposed revocation of Headquarters Ruling Letter (HQ) 954252 was published in the CUSTOMS BULLETIN on June 23, 1999, Vol. 33, No. 25. No comments were received.

Facts:

HQ 954252, dated November 15, 1993, described the merchandise (your code #Q4883) as follows:

The article consists of five snowmen, four sets of reindeer and a Santa on a sleigh. It is two dimensional. It is made of high-impact weather resistant styrene. Light bulbs and electric supply cords are supplied. Each ornament is designed with a triangular stake, which is pushed into the snow or ground. Light bulbs in sockets fit into an opening in the base of each ornament at the top of the stake and just below the pictorial representation. Once in place the light bulb are shielded by reflectors which snap into the stake over the bulb opening.

One ornament set consists of a Santa on a sleigh measuring 14½ inches high and four pairs of reindeer each measuring 16½ inches high. The five snowmen (holding candy canes) ornament set measures approximately 13 inches high. The commercial literature states that the lighted Santa and his reindeer and set of 5 snowmen are 10 feet long and are designed to be displayed on the lawn or mounted on a rooftop. Both items measure approximately 10 feet in length after each ornament is staked.

Issue:

Whether the lighted Santa and reindeer ornament and five snowmen ornament (#Q4883) is classifiable as plastic statuettes under heading 3926, HTSUS, or as a festive article under heading 9505, HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *". In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The headings under consideration are as follows:

- 3926 [o]ther articles of plastic and articles of other materials of headings 3901 to 3914
- 9505 [f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof

Note 1(v) to Chapter 39, HTSUS, states that "[t]his Chapter does not cover: * * * [a]rticles of chapter 95 (for example, toys, games and sports equipment)." Therefore, if the lighted lawn ornaments are classifiable as other Christmas ornaments under heading 9505, then they are excluded from classification in heading 3926 by operation of Note 1(v) to Chapter 39.

In HQ 954252, Customs held that the subject ornaments were not classifiable as festive articles in heading 9505 based on a narrow interpretation of the exemplars of traditional, festive articles cited in the Explanatory Notes to heading 9505, and the fact that "[w]hile the subject article is decorative and its pictorial representations may be generally associated with the winter season of the year, we note that they are not specifically festival related."

Also, HQ 954252 equated the subject lawn ornaments to an electric garland. For an item to be a garland, it must be able to be hung or draped on a tree, a wall, a banister, etc. The subject articles are not like garlands due to their size and structure; they are not capable of being either hung or draped, but rather staked into the ground or mounted onto the roof for display.

Furthermore, since HQ 954252 was issued, the court has ruled on the meaning of festive articles. In *Midwest of Cannon Falls, Inc. v. United States*, 122 F.3d 1423 (Fed. Cir. 1997) (hereinafter *Midwest*), the Court of Appeals addressed the scope of heading 9505; specifically the class or kind of merchandise termed, "festive articles," and provided new guidelines for classification of such goods in the heading. In general, merchandise is classifiable as a festive article in heading 9505, when the article, as a whole:

1. Is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. Functions primarily as a decoration or functional item used in the celebration of, and entertainment on, a holiday; and
3. Is associated with or used on a particular holiday.

Based upon a review of the articles subject to the *Midwest* decision, Customs is of the opinion that the Court has included within the scope of "festive articles," decorative household articles which are representations of an accepted symbol for a recognized holiday, and utilitarian/functional articles that are three-dimensional representations of an accepted symbol for a recognized holiday. See Customs' Informed Compliance Publication (ICP), "Classification of Festive Articles," 32 CUSTOMS BULLETIN 2/3, dated January 21, 1998.

In addition to the criteria listed above, the Court considered the general criteria for classification set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*). Therefore, with respect to decorative and utilitarian articles related to holidays and symbols not specifically recognized in *Midwest* or in the ICP, 32 CUSTOMS BULLETIN 2/3 at p. 178 ("IV. Additional Motifs, Symbols or Representations, B. Utilitarian Items"), Customs will also consider the general criteria set forth in *Carborundum* to determine whether a particular good belongs to the class or kind "festive articles." Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchaser, the channels of trade, the environment of sale (accompanying accessories, manner of advertisement and display), the use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

In considering the *Midwest* criteria, the reindeer pulling Santa in his sleigh ornament is not made predominately of precious or semiprecious stones, precious metal or metal clad with precious metal. The ornament functions primarily as an outdoor decoration used in the celebration of Christmas, a recognized holiday. Santa Claus is an accepted symbol for the Christmas holiday. Santa was specifically recognized in *Midwest* as 16 of the 29 litigated articles were Santa figures. See also ICP 32 CUSTOMS BULLETIN 2/3 at p. 176 ("III. Expanded Interpretation of 9505 Motifs, Symbols or Representations, A. Decorative Items, 'In 9505.10, Santa Claus'"). Santa's reindeer are another symbol that raises the possibility of a "festive" classification. See *Id.* at p. 177 ("IV. Additional Motifs, Symbols or Representations, A. Decorative Items, 'In 9505.10, Reindeer'"). Here, the reindeer directly pulling Santa's sleigh suggest that they are Santa's reindeer. This outdoor decoration is within the class of other decorative Christmas ornaments that are bought, sold and used during the Christmas season. The *Midwest* Court found that the term "ornament" should not be confined to objects that hang on a Christmas tree. Therefore, the Santa in the sleigh with his reindeer ornament which decorates a lawn or rooftop qualifies as a festive article of heading 9505, specifically subheading 9505.10.25, HTSUS.

The second item of #Q4883 is the five snowmen lawn ornament. The snowmen are identical: each is holding a candy cane and has a black top hat, green mittens, a green and red scarf, and a smile. Generally speaking, a snowman is a recognized symbol of the *winter* season. At issue here is whether these snowmen representations taken, as a whole, correspond to an article used in celebration of a particular holiday.

Does this snowmen ornament fall within the class or kind of ornament, namely, the Santa and his reindeer ornament, discussed above, which is principally, if not exclusively, used only during the holiday season for the specific purpose of decorating or ornamenting the home or Christmas tree? In Headquarters Ruling Letter (HQ) 961839, dated March 9, 1999, Customs found that the ordinary snowmen in the "Snowman Family Screen" were so embellished that the article had become part of the class of festive articles when the *Carborundum* factors were applied. In contrast, in HQ 961519, dated February 24, 1999, a "Scarecrow Snowman Lawn Ornament" was found not to belong to the class or kind of "festive articles" and was classified in subheading 6307.90.99, HTSUS. See also HQ 961511, dated February 24, 1999.

With respect to the general criteria of *Carborundum*, we note that in terms of the general physical characteristics, the snowmen ornament has no functional aspects and is exclusively decorative. The candy canes and color scheme of the snowmen are consistent with a Christmas theme. The ultimate purchaser would have the expectation of using the article to decorate the outside of their home during the day and night hours of the holiday season. The channels of trade for this type of merchandise would be in stores selling decorative seasonal Christmas articles for the home; however, these stores would also typically sell a variety of other home decorative articles. The environment of the sale appears to be part of a Christmas or holiday sales promotional effort since this particular item is advertised in the 5-page section of the importer's direct marketing catalogue (104 pages) that contains seasonal articles used in and for the home for the Christmas holiday; however, we note that the catalog displays for sale a wide-range of other products from footwear to electronics. The lawn ornaments are grouped in the catalog with other seasonal Christmas-related items such as hand-painted wooden Christmas ornaments, a musical Santa and Christmas tree cookie jar, a talking Santa candy dish and a 10-pc. outdoor lighted nativity scene. The recognition in the trade would apparently be as a Christmas article, in that the catalog pages provided in HQ 954252 are under the titles "Make all your holiday entertaining festive!" and "Corner Shop, Your source for unique gifts and holiday accents."

The *Carborundum* factors taken together leads to the conclusion that the article is within the class of festive articles. The lighted snowmen ornament, sold together with the Santa and his reindeer ornament, is within the same class of merchandise principally, if not exclusively, used to decorate the home during the Christmas holiday. As noted in HQ 961839, not all snowmen are automatically festive and the mere appearance of an article in a Christmas catalog is not sufficient to bring that article into the class of festive articles, although such an appearance is useful evidence toward that end.

Holding:

The lighted Santa and his reindeer ornament and five snowmen ornament (#Q4883) is classified as a festive article under heading 9505, specifically under subheading 9505.10.25, HTSUS, the provision for "[f]estive, carnival or other entertainment articles * * * parts

and accessories thereof; [a]rticles for Christmas festivities and part and accessories thereof; [c]hristmas ornaments; [o]ther: [o]ther."

Effect on Other Rulings:

HQ 954252 dated November 15, 1993, is REVOKED.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MEDICAL LASER IMAGER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a medical laser imager.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 [19 U.S.C. 1625(c)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of a medical laser imager and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on June 23, 1999, in the CUSTOMS BULLETIN, Vol. 33, No. 25.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro, General Classification Branch (202) 927-2244.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057)(hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accord-

ingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking New York Ruling Letter (NY) 818896, issued on February 20, 1996, and any other Customs rulings that may exist which has not been specifically identified, to reflect the proper classification of the medical laser imager as "instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical instruments and appliances and parts and accessories thereof: Other: Other" under subheading 9018.90.75, HTSUS. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Headquarters Ruling Letter (HQ) 962048, revoking NY 818896, is set forth as an attachment to this document.

Dated: July 28, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 28, 1999.
CLA-2 RR:CR:GC 962048 HMC
Category: Classification
Tariff No. 9018.90.75

MR. JAY A. CHARKOW
INTERNATIONAL TARIFF MANAGEMENT, INC.
127 Scott Road
Waterbury, CT 06705

Re: Konica Medical Laser Imaging System, Model Li-21; Other Electro-Medical Instruments and Appliances; NY 818896, Revoked.

DEAR MR. CHARKOW:

This is in response to your letter, dated July 6, 1998, on behalf of Konica Medical Corporation, requesting reconsideration of New York Ruling Letter 818896, dated February 20, 1996. In NY 818896, Customs classified the Konica medical laser imager, model Li-21, un-

der subheading 9033.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS), as accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), notice of the proposed revocation of NY 818896 was published on June 23, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 25. No comments were received in response to the notice.

Facts:

The merchandise is the Konica medical laser imager, model Li-21 ("laser imager"). The laser imager has an electrical control unit or controller, a laser unit, supply film magazines, a print unit and a receive unit. Using modality interface boards, the controller receives video and/or digital signals sent by diagnostic equipment, such as computed tomography (CT) scanners, magnetic resonance imaging machines (MRI), and sonograms, from any location in a hospital. The controller configures the analog signals into digital images in paginated format and then transmits the images to the imager. Once received, the imager records the configured images onto a special negative film. A separate film processing unit conducts the actual job of developing the film. The laser imager may be imported by itself or with connectors (models LD-7, LD9 and/or LD-10) and a film processing unit (model SRX-501A). This ruling does not cover the classification of the connectors or the film processing unit.

The HTSUS provisions under consideration are as follows:

- | | |
|------------|---|
| 8471 | Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: |
| 8471.60 | Input or output units, whether or not containing storage units in the same housing: |
| | Other: |
| | Printer units: |
| | Assembled units incorporating at least the media transport, control and print mechanisms: |
| | Laser: |
| 8471.60.52 | Other. |
| * | * * * * * |
| 9018 | Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: |
| 9018.90 | Other instruments and appliances and parts and accessories thereof: |
| | Other: |
| | Electro-medical instruments and appliances and parts and accessories thereof: |
| | Other: |
| 9018.90.75 | Other. |
| * | * * * * * |
| 9033.00.00 | Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90. |

Issue:

Whether the laser imager is classifiable as parts and accessories (not specified or included elsewhere in chapter 90) for machines, appliances, instruments or apparatus of chapter 90 under subheading 9033.00.00, HTSUS, or, as other electro-medical instruments and appliances under subheading 9018.90.75, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

NY 818896, dated February 20, 1996, classified the merchandise under subheading 9033.00.00, HTSUS, as parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90. In your letter, you contend that the laser imager is a printer and that, by application of Chapter 90, Note 2(a), it is classifiable under subheading 8471.60.52, HTSUS, as a printer unit. We disagree with the classification provided in NY 818896 and with your proposed classification of the subject merchandise. It is our view that the laser imager is described by heading 9018, HTSUS. Heading 9018 includes instruments and appliances used in medical surgical, dental or veterinary sciences * * *, other electro-medical apparatus and sight-testing instruments.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

General EN (I) to Chapter 90, at page 1576, states that Chapter 90

covers a wide variety of instruments and apparatus which are, as a rule, characterized by their high finish and high precision. Most of them are used mainly for scientific purposes (laboratory research work, analysis, astronomy, etc.), for specialized technical or industrial purposes (measuring or checking, observation, etc.) or for medical purposes.

EN 90.18, at page 1609, states that heading 9018 covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g. by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc.

The evidence provided suggests that the laser imager is principally used in a hospital or professional practice for processing radiology films. See Additional U.S. Rule of Interpretation 1(a). The subject merchandise is designed to convert analog signals received from various diagnostic units, such as ultrasound and MRI machines, into digitized signals. The imager produces negatives which are subsequently developed into "x-ray" films by the film processing unit. As such, the merchandise is an appliance used in the medical science, described by heading 9018.

It was suggested that the laser imager is classifiable under subheading 9018.19.95, HTSUS, as other electro-diagnostic apparatus. It is our position that the subject merchandise is not an electro-diagnostic apparatus. We find instead that the Konica medical laser imager, model Li-21, is an electro-medical apparatus classifiable under subheading 9018.90.75, HTSUS. In HQ 961998, dated May 7, 1999, we consulted the *Webster's II New Riverside University Dictionary* 372 (1988) and the *Dorland's Illustrated Medical Dictionary* 458 (28th ed.) to obtain a definition of the terms "diagnostic" and "diagnosis." We noted that the term "diagnosis" is defined as "the act or process of identifying or determining the nature of a disease by way of examination." In this instance, the laser imager is not a device that is itself used for examination, like a MRI or sonogram.

Since the laser imager is an article described by heading 9018, HTSUS, heading 8471 is precluded from consideration (see Section XVI, Note 1(m), HTSUS, which states that the Section, which includes Chapter 84, does not cover articles of Chapter 90) and subheading 9033.00.00, HTSUS, is inapplicable. See HQ 960262 and HQ 960292, both dated October 20, 1998, for a similar conclusion. Accordingly, NY 818896 is revoked.

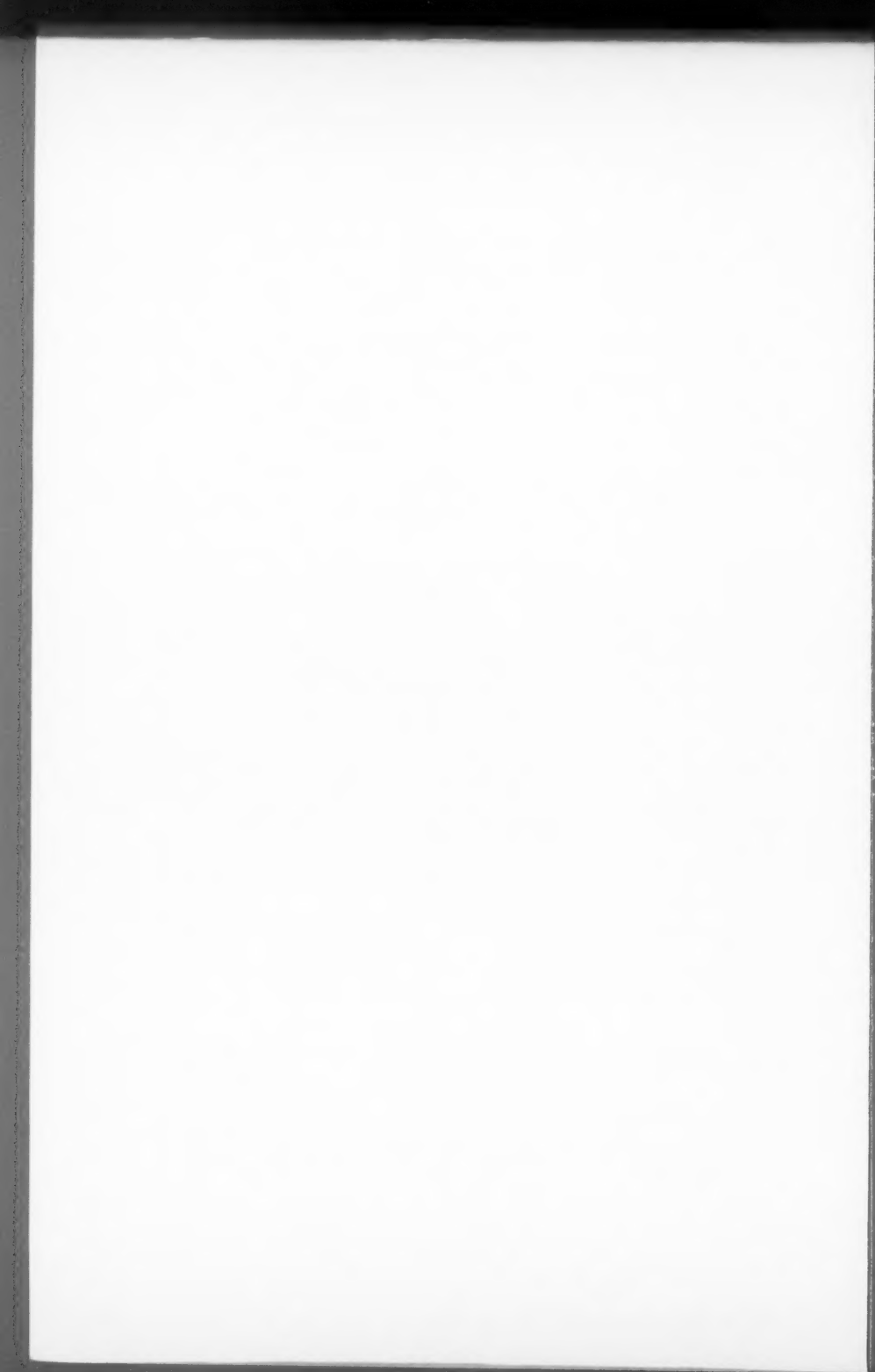
Holding:

Konica medical laser imager, model Li-21 is classifiable under subheading 9018.90.75, HTSUS, as "Electro-medical instruments and appliances and parts and accessories thereof: Other: Other."

Effect on Other Rulings:

NY 818896, dated February 20, 1996, is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)



U.S. Customs Service

Proposed Rulemaking

19 CFR Part 113

RIN 1515-AC44

IMPORTATION AND ENTRY BOND CONDITIONS REGARDING OTHER AGENCY DOCUMENTATION REQUIREMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations with regard to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. The proposed amendment would extend this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence submitted to other Government agencies under laws and regulations of those other agencies.

DATES: Comments must be received on or before October 5, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202-927-2344).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 113.62 of the Customs Regulations (19 CFR 113.62) sets forth the conditions that are incorporated by reference in a basic importation and entry bond (on Customs Form 301) that must be on file with Customs when merchandise is imported and entered in the United States.

Those conditions involve the agreements on the part of the obligors under the bond (that is, the principal and/or the surety) to take specific actions required by statute or regulation in connection with the importation/entry process and to pay liquidated damages as a consequence of a default on any agreement in a bond condition.

Paragraph (c) of § 113.62 concerns the agreement to produce documents and evidence. This regulatory text provides that "[i]f merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees to furnish Customs with any document or evidence as required by law or regulation, and within the time specified by law or regulations" (emphasis added). Since this bond condition refers only to documents or other evidence required to be furnished to Customs, it would not apply to documents and other evidence that are required by law or regulation to be submitted to another Government agency. Under paragraph (l)(1) of § 113.62, if the principal defaults on the paragraph (c) agreement, the obligors (that is, the principal and surety, jointly and severally) agree to pay liquidated damages in an amount generally equal to the value of the merchandise involved in the default or another amount that may vary depending on the nature of the merchandise or the terms of the specific substantive law or regulation at issue.

Basis for the Proposed Regulatory Change

On January 13, 1999, the Farm Service Agency (FSA) of the Department of Agriculture published in the Federal Register (64 FR 2152) a proposed rule to amend Part 782 of the FSA Regulations (7 CFR Part 782), which pertains to the end-use certificate program. The end-use certificate program was established pursuant to section 321(f) of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057), which is codified at 19 U.S.C. 3391(f). The program applies to wheat or barley imported into the United States from any foreign country or instrumentality thereof that, as of April 8, 1994, required end-use certificates for imports of U.S.-produced wheat or barley. The purpose of the program is to ensure that foreign agricultural commodities do not benefit from U.S. export programs (see H. Rep. 103-361, 103d Cong., 1st Sess., at 68). The regulations under the program, which were promulgated by the FSA in consultation with Customs as required by the statute, currently affect only wheat originating in Canada (see 7 CFR 782.10(b)).

The amendments proposed by the FSA in the January 13, 1999 notice would affect §§ 782.2 and 782.12 (7 CFR 782.2 and 782.12), which set forth, respectively, the definitions that apply for purposes of Part 782 and the requirements for completing and filing the end-use certificate for imports of wheat originating in Canada. Specifically, the proposed regulatory changes would: (1) Amend the definition of "importer" to refer to the party qualifying as importer of record under 19 U.S.C. 1484(a); (2) reduce the time period for submission of the end-use certificate (form FSA-750) to the FSA from "within 15 workdays following the

date of entry" to "within 10 workdays following the date of entry or release"; and (3) add several data elements to be set forth on the form FSA-750.

In addition to a discussion of the proposed regulatory amendments, the background portion of the January 13, 1999, FSA notice contains the following statement: "The U.S. Customs Service has informed the Department of Agriculture officials that it will be amending the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA." This statement resulted from discussions that Customs personnel had with FSA personnel regarding ways to improve the administration and enforcement of the end-use certificate program, consistent with the statutory consultative mandate set forth in the statute and reflected in the FSA regulations (see 7 CFR 782.3), and reflected the fact that the text of present paragraph (c) of § 113.62 technically does not apply to the end-use certificate because it is not furnished to Customs but rather is submitted to the FSA.

Nature and Scope of the Proposed Regulatory Change

Based on the above, Customs is proposing in this document to revise paragraph (c) of § 113.62 to ensure that it will cover documents and other evidence required in connection with the importation/entry process that are prescribed by, and submitted to, Government agencies other than Customs. Although the need for this proposal arose in the specific context of the FSA end-use certificate program, Customs has drafted the proposed new regulatory language in broad terms because Customs believes that the basic principle at issue should be applicable to importation/entry-related requirements of all Government agencies.

COMMENTS

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendment will not require any additional action on the part of the public but rather is intended to facilitate Customs enforcement efforts involving existing import requirements under other Government agency laws and regulations. Ac-

cordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons stated above, it is proposed to amend Part 113 of the Customs Regulations (19 CFR Part 113) as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. Section 113.62(c) is revised to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(c) *Agreement to produce documents and evidence.* If merchandise is released conditionally to the principal before production of all documents or other evidence required by a law or regulation administered by Customs or another government agency, the principal agrees to furnish Customs or the other government agency with any such document or other evidence as required by, and within the time specified in, such law or regulation.

* * * * *

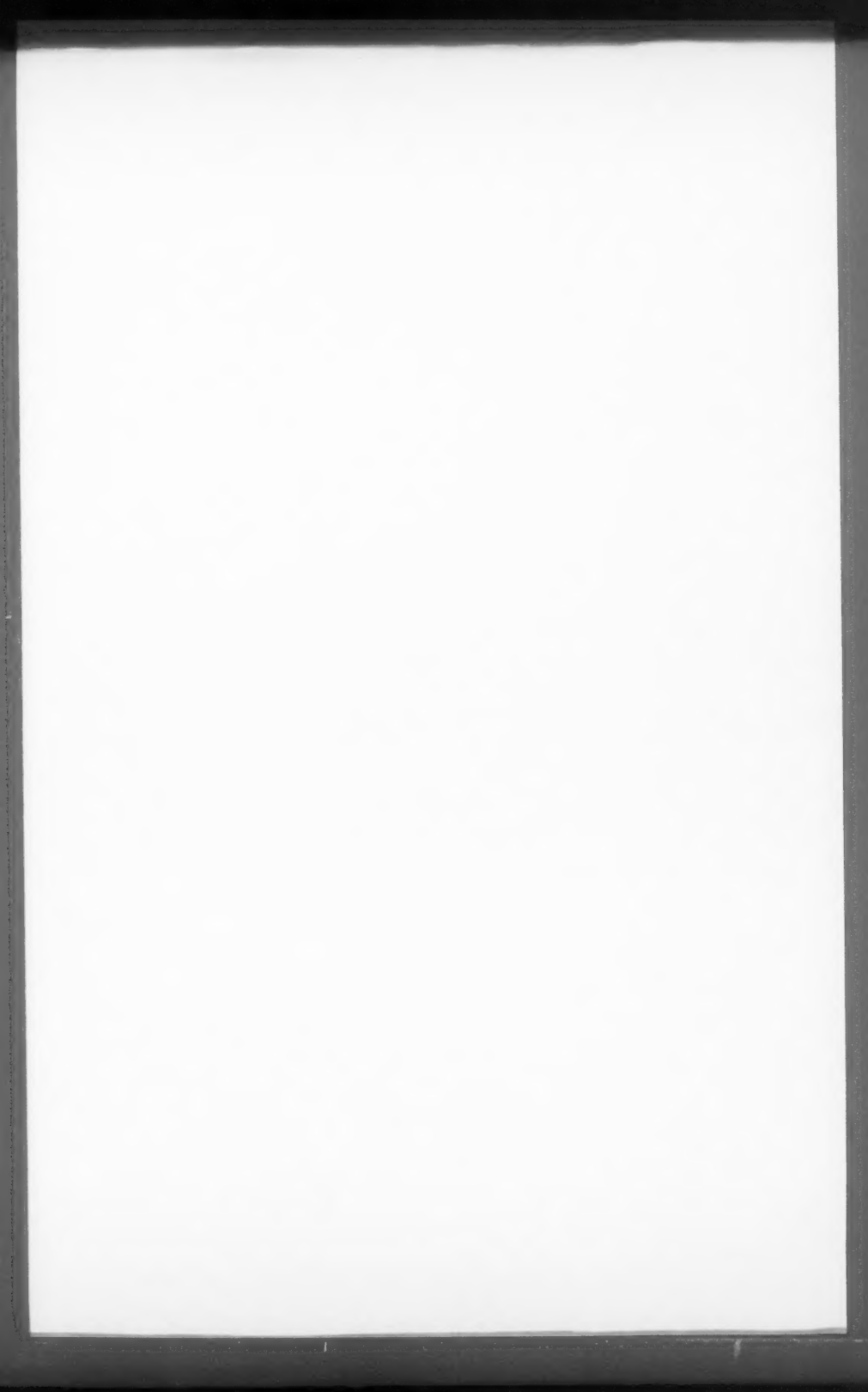
RAYMOND W. KELLY,
Commissioner of Customs.

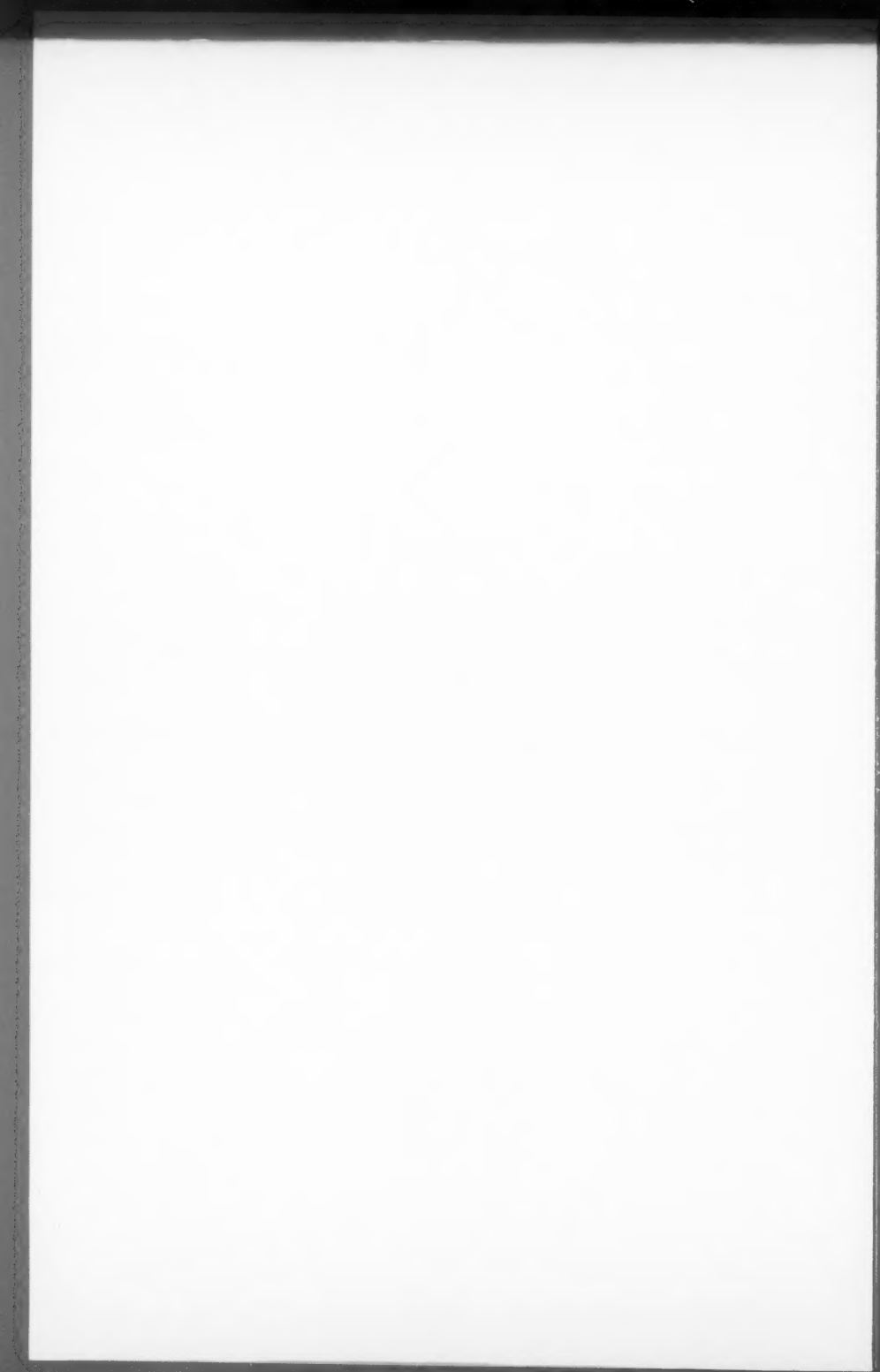
Approved: June 17, 1999.

JOHN P. SIMPSON,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, August 6, 1999 (64 FR 42872)]





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